At Special Term of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof, 360 Adams Street, Brooklyn, New York, on the 14th day of December, 2005

P R E S E N T:

HON. THEODORE T. JONES,

Justice.

- -X

NEW YORK CITY TRANSIT AUTHORITY and MANHATTAN and BRONX SURFACE TRANSIT OPERATING AUTHORITY,

Plaintiffs,

Index No. 37469/05

- against -

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO ("International"), an unincorporated voluntary association, et al,

Defendants.

- -X

MTA BUS COMPANY,

Plaintiff,

Index No. 37468/05

- against -

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO ("International"), an unincorporated voluntary association, et al,

Defendants.

- -X

- -X

ROGER TOUSSAINT, individually and as President
of TRANSPORT WORKERS UNION OF GREATER
NEW YORK, local 100

Plaintiff,

Index No. 37434/05

-against-

LAWRENCE REUTER, as President of the
NEW YORK CITY TRANSIT AUTHORITY,
and the MANHATTAN & BRONX SURFACE
TRANSIT OPERATING AUTHORITY,

Defendant.

- -X

The following papers numbered 1 to X read on this motion:

	Papers Numbered
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	1-4, 5-8, 9-11
Opposing Affidavits (Affirmations)	12, 13
Reply Affidavits (Affirmations)	
____________ Affidavit (Affirmation)	
Other Papers Amicus Brief of UFT	14

Upon the foregoing papers, plaintiffs New York City Transit Authority ("NYCTA"), Manhattan and Bronx Surface Transit Operating Authority ("MABSTOA") and MTA Bus Company ("MTA Bus") (collectively known hereinafter as "the TA") move, by order to show cause, for an order granting them a preliminary injunction: (1) enjoining defendants the Transport Workers Union of America, AFL-CIO ("International"), Local 100 of the Transport Workers Union of America, AFL-CIO ("Local 100") and their respective officers, directors, executive board members, members, employees, agents and representatives (collectively, defendants) from violating section 210 of the New York Civil Service Law by conducting, engaging or participating in, through any manner or

any means, a strike, work stoppage, sick-out, slowdown, refusal to work as assigned, sabotage, vandalism or any other concerted activity with the intent of interrupting the normal and regular operations of the TA; (2) enjoining International, Local 100 and their respective officers, directors and executive board members from violating section 210 of the New York Civil Service Law by causing, instigating or inciting a strike, work stoppage, sick-out, refusal to work as assigned, sabotage, or vandalism against the the TA; (3) directing the officers, directors, and executive board members of Local 100 to notify forthwith all of its members (i) of their obligation not to strike according to State law and of the directives of the preliminary injunction, and (ii) that they are to continue to fulfill the terms of their employment.

Facts and Procedural History

The current employment agreements between the NYCTA and MABSTOA and the members of Local 100 expire at 12:01 a.m. on December 16, 2005. MTA workers, former bus operators of private bus lines, have been working without a contract for approximately three years. On the evening of December 10, 2005, a general meeting of the membership of Local100 was held wherein the members of said union voted to give their union leadership the power to call a strike in the event a new employment contract is not reached prior to expiration of the current employment agreement. Moreover, certain statements from Local 100 representatives indicate that they demand and expect a new contract for MTA workers prior to the expiration of the NYCTA and MABSTOA contracts. Anticipating the TA's request for injunctive relief, Roger Toussaint, individually and as President of Local 100, commenced an action against Lawrence Reuter, as the President of NYCTA and MABSTOA, in Supreme Court, New York County in early December, 2005. Said action, brought by order to show cause, sought to prevent defendant from: (1) taking any action to prohibit a strike

authorization vote by members of Local 100; (2) filing any ex-parte applications with the court for injunctive relief; and (3) taking any action to prevent, or chill, discussion among TA employees regarding the propriety of a strike. Unbeknownst to Mr. Toussaint, Justice Jonathan Lippman, Chief Administrative Judge of the New York State courts, assigned all transit related matters to this court and, as a result, the New York County action was transferred to Kings County. On December 12, 2005, the TA moved, by order to show cause, for an order to schedule a hearing on their application for a preliminary injunction enjoining defendants from , *inter alia*, conducting, engaging or participating in, through any manner or means, a strike, work stoppage, sick-out or slowdown. The court granted the motion and scheduled a hearing on the TA's application for injunctive relief for the next day, December 13, 2005. On that day, the parties appeared, submitted papers and engaged in oral argument. Upon the suggestion of the parties, the court consolidated all three actions for purposes of issuing a decision in these matters. After due deliberation, this court issued a preliminary injunction against defendants on December 13, 2005 with a long form decision to follow.[1] Specifically, the December 13, 2005 preliminary injunction order, in effect, enjoined defendants International, Local 100 and the officers, directors, executive board members, members, employees, agents and representatives of both entities from violating section 210 of the Civil Service Law by conducting, engaging or participating in, through any manner or any means a strike, work stoppage, sick-out, slowdown, or any other concerted activity with the intent of interrupting the normal and regular operations of NYCTA, MABSTOA, or MTA Bus.

The preliminary injunction further enjoined defendants International, Local 100 and their

[1]In actuality, two separate preliminary injunction orders containing the same language were issued, one of which pertained to NYCTA and MBSTOA, and one of which pertained to MTA Bus.

respective officers, directors and executive board members from violating section 210 of the Civil Service Law by causing, instigating, or inciting a strike, work stoppage, sick-out, or slowdown against the NYCTA, MABSTOA or MTA Bus.

Finally, the preliminary injunction order directed that each and every member of Local 100 receive proper notice of the order, and placed the burden of effectuating such service by first class mail with a certificate of mailing upon the TA. Furthermore, the officers, directors, and executive board members of Local 100 were directed to forthwith notify all of its members of their obligation not to strike and of the directives of the preliminary injunction. This notice was to be by ordinary mail and e-mail, wherever feasible, and by placing such notification on the website of Local 100 and the International.

The court now addresses the parties' contentions in detail.

The Taylor Law

Article 14 of the Civil Service Law (the Taylor Law) was enacted some 38 years ago in the wake of a transit strike that paralyzed the City of New York for a period of 12 days. Among other things, the Taylor Law was enacted in order to "promote . . . uninterrupted service in the public sector by avoiding destructive self-help remedies" (*Association of Surrogates & Supreme Ct. Reporters within the City of New York v State of New York*, 79 NY2d 39, 45 [1992]). Toward this end, Civil Service Law § 210 (1) provides that "[no] public employee or employee organization shall engage in a strike, and no public employee or employee organization shall cause, instigate, encourage, or condone a strike." Civil Service Law § 201 (9) broadly defines a strike as "any strike or other concerted stoppage of work or slowdown." Finally, Civil Service Law § 211 provides in pertinent part that, "where it appears that public employees or an employee organization threaten

or are about to do, or are doing, an act in violation of section two hundred ten of this article . . . the chief legal officer of the government involved [in this case, the Attorney General] shall forthwith apply to the supreme court for an injunction against such violation." Such an application is now before the court.

The TA's Arguments

In moving for a preliminary injunction, the TA argues that the defendants have threatened to strike in violation of Civil Service Law § 210 (1). In support of this argument, the TA points to the aforementioned December 10, 2005 Local 100 membership meeting whereat the union membership voted to give the Local 100 Executive Board the authorization to call a strike if no agreement is reached before Thursday, December 15, 2005 at midnight. According to the TA, this is a significant development inasmuch as, under Local 100's bylaws, the Executive Board must receive the approval of a majority of the union membership for a strike action before making any final decision as to whether to call a strike. In addition to this strike authorization vote, the TA submits copies of numerous press reports which contain statements purportedly made by union officials and members which indicate that a strike will likely occur if a new agreement is not reached prior to the expiration of the current employment agreement.

In further support of their motion, the TA argues that, should Local 100 make good on its alleged threat to strike in violation of the Taylor Law, the TA will suffer irreparable harm. More importantly, the TA maintains that such a strike would have a catastrophic impact upon both the governmental institutions within the City of New York, as well as the ordinary citizens and business owners within the City. Specifically, the TA points out that an estimated seven million riders utilize public transportation in New York City on an average weekday, including riders who perform

essential services such as police, fire, hospital, and educational services. Should a strike occur, many of these individuals would be prevented from performing such services. Moreover, the TA notes that a strike would cause serious traffic congestion on the public streets and highways, which would hamper the free passage of emergency vehicles and likely lead to the loss of life. The TA also maintains that a transit strike would have a grave impact upon the City's economy. In particular, the TA submits an affidavit by Joseph F. Bruno, the Commissioner of New York City Office of Emergency Management, in which he avers that the City would lose approximately $8.1 to $12.2 million dollars per day in tax revenue. In addition, Commissioner Bruno estimates that businesses located within the City will suffer an estimated loss of $440 to $660 million per day due to lost business activity resulting from a transit strike.

Accordingly, given Local 100's threat to strike in violation of the Taylor Law, and the catastrophic impact such a strike would have on the public welfare and safety, as well as the City's economy, the TA maintains that a preliminary injunction is necessary.

Defendants' Arguments in Opposition

In opposition to the TA's motion, defendants argue that the Taylor Law and proposed requests for injunctive relief violate their rights under the First Amendment of the United States Constitution. Stated differently, defendants, while acknowledging that they do not a have constitutional right to strike (*see United Federation of Postal Clerks v Blount*, 325 F. Supp. 879 [1971]), argue that Civil Service Law § 210 and the requested injunctions inhibit and improperly regulate constitutionally protected speech since the language contained therein can be construed to prohibit merely the advocacy of the right to strike.

Alternatively, defendants maintain that it would be inappropriate to grant a preliminary

injunction at this juncture inasmuch as the TA has failed to establish that there is an "imminent threat" of a strike. In this regard, defendants point out that the contract negotiations are ongoing and the current employment agreement will not expire until midnight on December 15, 2005. Moreover, defendants note that, even if the contract expires before a new agreement is reached, several things must occur before any strike takes place including a vote in favor of a strike by Local 100's Executive Board as well as the approval of the International. According to defendants, to date, no discussions have been held by the leadership of Local 100 or the International regarding what, if any, actions will be taken by said leadership if a new contract agreement is not reached before the deadline.

The Court's Findings

The court first addresses defendants' argument that the proposed preliminary injunction is unconstitutional. As previously set forth, Civil Service Law § 210 (1) provides that "[n]o public employee or employee organization shall engage in a strike ... [or] cause, instigate, encourage, or condone a strike." While it is true that the mere advocacy of illegal conduct, standing alone, is protected speech under the First Amendment (*see Hess v Indiana*, 414 US 105,108-109 [1973]), it is also well settled that such speech may be enjoined "where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action" (*Brandenburg v Ohio*, 395 US 444, 447 [1969]). Therefore, while an injunction may not enjoin public employees from simply advocating their right to engage in an illegal strike, such an injunction may be issued where such advocacy is directed to inciting or producing imminent lawless action which is likely to occur or follow. Perhaps surprising, there is a paucity of case law addressing the issue of protected speech under the Taylor Law.

Some guidance, however, may be found in the matter of *Rogoff v Anderson* (34 AD2d 154 [1970] aff'd 28 NY2d 880 [1971]), wherein the Appellate Division, First Department expressly held that Civil Service Law § 207(3) did not violate the right to free speech under the United States Constitution. Said section of the Civil Service Law provides that an employee organization must submit an affirmation stating that it does not assert the right to strike or to assist or participate in a strike before becoming certified to act as the exclusive representative for collective bargaining. Consequently, *Rogoff* supports the proposition that the Taylor Law is constitutional on its face. Furthermore, it is beyond cavil that all statutes enjoy the strong presumption that they are constitutional (*see Hynes v Tomei*, 92 NY2d 613, 626 [1998]). Indeed, the court notes that similar relatively recent applications for injunctive relief to prevent a threatened strike of transit employees were made to the Supreme Court, Kings County in 1999 and 2002, without any finding by the court that the Taylor Law was unconstitutional. While the terms "encourage" and "condone" a strike may be construed to imply that mere advocacy is prohibited (*see generally National Organization For Women v Operation Rescue*, 37 F3d 646 [1994]), such resolution is unnecessary since the proposed requests for injunctive relief do not include such language.

In addition, the court notes that the constitutional standard for determining overbreadth of injunctions is whether "the challenged provisions of the injunction burden no more speech than necessary to serve a significant governmental interest" (*Madsen v Women's Health Ctr.*, 512 US 753, 765 [1994]). The standard for a statute or restraining order is whether it is "narrowly tailored to serve a significant governmental interest"(*Ward v Rock Against Racism*, 491 US 781, 791 [1989]). In the case at bar, the preliminary injunctions seek to enjoin defendants from, *inter alia*, "conducting, engaging or participating in a strike, work stoppage, sick-out, slowdown, *refusal to*

work as assigned, sabotage, vandalism or any other concerted activity with the intent of interrupting the normal and regular operations of [the TA]"(emphasis added). While the proposed requests for injunctive relief, for the most part, track the language contained in the Taylor Law, said requests also seek to enjoin conduct which is not found in that section (namely, refusal to work as assigned, sabotage and vandalism). The Taylor Law enjoins concerted action by municipal and state employees, not isolated acts of vandalism or sabotage which have yet, and hopefully, will not occur. Furthermore, acts of vandalism and sabotage, as noted by defense counsel, are a crime and would subject the perpetrator to both criminal charges and termination from employment. In light of the foregoing, the court sees no basis or necessity, at this time, to include such acts as part of its injunction. In addition, defense counsel convincingly argues that an injunction with respect to the refusal to work as assigned is inappropriate since it may encompass language which is permitted under the parties' current contract. In this regard, it was pointed out that the proposed request for injunctive relief may infringe upon the parties' agreement with respect to work assignments. Since such a prohibition appears overly broad and in possible conflict with the parties' existing contracts, the court declines to grant an injunction as to same.

As so modified, the court finds that said injunctions are narrowly tailored so as to avoid unwarranted prohibitions against protected speech. In fact, the requests for preliminary relief are, in some instances, more narrowly drawn than the language contained in the Taylor Law, which statute the court has already found is constitutional on its face. The court is satisfied that plaintiffs' requests for injunctive relief are not geared to prohibit the mere advocacy of the right to strike but instead seek to enjoin advocacy that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. Further, the plaintiffs have a clear and significant public

interest in attempting to avert a transit strike that would create havoc in New York City during the all important holiday season.

Since the court finds that plaintiffs' requests for injunctive relief are, as modified, narrowly tailored to promote a legitimate state interest and do not infringe upon defendants' First Amendment rights, that branch of Mr. Toussaint's application seeking to prevent the TA from taking any action to prevent, or chill, discussion among TA employees about the propriety of a strike is denied. Further, the remaining branches of Mr. Toussaint's application for injunctive relief seeking to enjoin the TA from interfering with the rights of Local 100 members to vote for a strike authorization and from filing any ex-parte applications for injunctive relief against Local 100 have been rendered moot since such a vote was held and the TA's requests for injunctive relief were made on notice.

Turning to defendants' argument regarding the lack of an imminent threat to strike, Civil Service Law § 211 requires that the Attorney General seek a preliminary injunction where it appears that public employees or a public employee organization threatens to strike in violation of Civil Service Law § 210 (1). Similarly, CPLR 6301 provides in pertinent part that "[a] preliminary injunction may be granted in any action where it appears that the defendant threatens . . . to do . . . an act in violation of plaintiff's rights." Furthermore, case law holds that, "[u]nder the Taylor Law, the mere threat of a strike is sufficient to warrant the grant of [a] temporary restraining order" (*Board of Education v Pisa*, 55 AD2d 128, 134 [1976]).

Here, irrespective of defendants' claims that there is no "imminent risk" of a strike, the evidence submitted by the TA is sufficient to establish that there is a likely threat of a transit strike. In particular, it is undisputed that the members of Local 100 voted unanimously to give their Executive Board the authority to call a strike if a new contract agreement is not reached by the

December 15, 2005 deadline. This is significant for two reasons. First, under Local 100's by-laws, such approval is necessary before any strike may occur. Second, the various press accounts submitted by the TA indicate that, if no new agreement is reached prior to the deadline, there is a strong possibility that the union members will not work without a contract. Indeed, according to one Newspaper article submitted by the TA, Mr. Toussaint is quoted as stating that there is a "50/50 chance" of a strike if a new agreement is not reached prior to the expiration of the current contract agreement.

Moreover, in gauging whether the risk of a strike exists so as to warrant the issuance of a preliminary injunction, the court cannot turn a blind eye to the grave nature of the underlying risk itself. In fact, courts must consider both "the prospect of irreparable injury if the relief is withheld" and also must find "a balancing of the equities in the movant's favor" (*Gagnon Bus Co, Inc. v Vallo Transp. Ltd.* 13 AD3d 334, 335 [2004]). Here, there is abundant evidence that a transit strike would have a disastrous impact upon the economy, public safety, and overall welfare of the City of New York. Indeed, defendants do not claim otherwise. In contrast, the narrowly tailored December 13, 2005 preliminary injunction, which merely prohibits defendants from engaging in conduct that is expressly prohibited under Civil Service Law § 210 (1), places no undue burden upon the union or its members. Under the circumstances, the court finds that the TA is entitled to a preliminary injunction prohibiting defendants from violating the Taylor Law as provided in the December 13, 2005 preliminary injunction order.

Notice and Costs

The court finds with respect to the issue of which party must bear the burden and cost of

service of the preliminary injunction upon the individual members of the union, that the plaintiffs must bear such costs. The apparent reason proffered for the necessity of serving each and every member of the defendant union is to provide each such member with notice of the injunction in the event plaintiffs seek to have any such member held in contempt for violating the enjoined activity pursuant to Judiciary Law §§ 750 and 751. As such, inasmuch as the burden of establishing that such notice has been satisfactorily given would be on plaintiffs (*see generally Orchard Park Central School Dist v Orchard Park Teachers Ass'n, et al*, 50 AD2d 462, appeal dismissed in part, denied in part 38 NY2d 911 [1976]), the costs associated with providing such notice should, at least initially, be borne by plaintiffs. The court notes further that, as per the terms of the injunction, defendant must bear the costs associated with notifying their members of their obligation not to strike and of the directives of the injunction.

Summary

For the foregoing reasons, the TA's motion for a preliminary injunction is granted to the extent set forth in the court's December 13, 2005 preliminary injunction order. Furthermore, Mr. Toussaint's motion for a preliminary injunction is denied for the reasons set forth above.

This constitutes the decision of the court.

ENTER,

J. S. C.